



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,881	09/24/2003	Lec Bolduc	9494.17965-CIP 2	2225
26308 7590 01/25/2008 RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			EXAMINER RYCKMAN, MELISSA K	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 01/25/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/669,881

Applicant(s)

BOLDUC ET AL.

Examiner

Melissa Ryckman

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on received on 9/7/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38 and 40-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38 and 40-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's election without traverse of invention II in the reply filed on 9/7/07 is acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38 and 40-44 rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Taheri (5,042,707).

1. Taheri discloses method for repairing a diseased or damaged section of an aorta comprising:
2. (i) providing a system comprising at least one tissue-piercing fastener (81) having a sharpened distal tip for piercing and penetrating tissue, a fastener attachment (68) assembly sized and configured to be deployed from a remote access site to a targeted endovascular region, the fastener attachment (68) assembly including, an intraluminal directing device (28) defining an access path (70) and including a deflectable distal region (12) and an intraluminal fastener applier separate from the intraluminal directing device and being sized and configured for introduction along the access path and including an actuated member that is selectively operable to generate an implantation force in an implantation force direction to implant the tissue-piercing fastener by causing

the sharpened distal tip to pierce and penetrate the tissue in the targeted endovascular region (Fig. 9), and means associated with the fastener attachment assembly for applying a resolving force (Fig. 12, near 24) in a direction different than the implantation force direction within the targeted endovascular region to resolve at least a portion of the implantation force

3. (ii) introducing the intraluminal directing device from a remote access site to a location within a prosthesis that has been deployed at a target site in an aorta where the diseased or damaged section exists;
4. (iii) establishing the access path (70) to a desired fastening site on the prosthesis by manipulating the intraluminal directing device within the prosthesis to orient the distal region with respect to the desired fastening site (Fig. 12);
5. (iv) introducing the intraluminal fastener applier (68) along the access path (70) to the desired fastening site;
6. (v) anchoring the prosthesis by operating the actuated member to generate an implantation force to implant in the tissue-piercing fastener into tissue at the desired fastening site while the means applies a resolving force to resolve within the targeted site with an aorta (col. 2, ll. 12, blood vessel) at least a portion of the implantation force.
7. Taheri does not specify the targeted site being the aorta, however Taheri teaches a blood vessel, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method of Taheri with the aorta, as the aorta is a blood vessel and it is well known in the art to use the device of Taheri in the aorta.

8. Claim 40: Taheri teaches wherein (iii) includes rotating the intraluminal directing device and/or deflecting the distal region (Fig. 12).
9. Claim 41: Taheri teaches the prosthesis includes at least one self-expanding scaffold (79), and wherein (ii) comprises releasing the prosthesis from constraint to permit the at least one scaffold of the prosthesis to self-expand at the target site.
10. Claim 42: Taheri teaches the prosthesis includes at least one malleable scaffold (79), and wherein (ii) comprises applying a radially expansive force within the prosthesis to cause expansion of the at least one scaffold (Figs. 9-12).
11. Claim 43: Taheri teaches the intraluminal directing device (28) includes a passage that defines the access path (70), and wherein (iv) includes introducing the intraluminal fastener applier through the passage to the desired fastening site (Fig. 9-12).
12. Claim 44: Taheri teaches the passage comprises an interior lumen (28).

Response to Arguments

Applicant's arguments filed 5/15/06 have been fully considered but they are not persuasive. The applicant generally argues the following:

- Taheri does not teach an intraluminal directing device having a deflectable distal region and an intraluminal fastener applier separate from the directing device.

The examiner respectfully disagrees with the applicant. Taheri teaches an intraluminal directing device (28) having a deflectable distal region (Fig. 12) and an

intraluminal fastener applier (86) separate from the directing device (See. Fig. 9, these are separate devices).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Ryckman whose telephone number is (571)-272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:
10/669,881
Art Unit: 3773

Page 6

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR


(JACKIE) TAN-UYEN HO
SUPERVISORY PATENT EXAMINER